

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

UNITED STATES OF AMERICA

v.

OKELLO T. CHATRIE,

*Defendant.*

Case No. 3:19-cr-00130-MHL

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
IN SUPPORT OF NEITHER PARTY**

Google LLC respectfully requests leave to file an amicus curiae brief in support of neither party on Defendant's Motion To Suppress Evidence Obtained From A "Geofence" General Warrant (ECF No. 29). The proposed brief is attached as an exhibit to this motion.

Although the Federal Rules of Criminal Procedure do not expressly contemplate the filing of amicus briefs before district courts, it is well accepted in this district and elsewhere that a district court "has broad discretion in deciding whether to allow a non-party to participate as an *amicus curiae*." *Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007); *see Sierra Club v. Virginia Elec. & Power Co.*, No. 2:15-cv-112, 2016 WL 5349081, at \*2 (E.D. Va. Feb. 4, 2016); *Perry-Bey v. City of Norfolk*, No. 2:08-cv-100, 2008 WL 11348007, at \*2 (E.D. Va. Aug. 14, 2008). Courts generally accept the briefs of proposed amici when the amici "provide helpful analysis of the law [or] ... have a special interest in the subject matter of the suit." *Tafas*, 511 F. Supp. 2d at 659. Such a motion will only be granted if "the court deems the preferred information timely and useful." *Id.* (quotation marks omitted).

Google has a "special subject matter in the subject of the suit," and it seeks to provide information that will be "useful" to the Court. *Tafas*, 511 F. Supp. 2d at 659. As is explained in

greater detail in the proposed amicus brief, Google seeks to provide contextual information to the Court about the data at issue in Defendant Chatrie’s Motion To Suppress Evidence Obtained From A “Geofence” General Warrant (ECF No. 29). That warrant compelled Google to produce data associated with Chatrie and other Google users—specifically, data from by Google’s Location History (“LH”) service, which gives individual users the option to create, edit, and save records of their whereabouts over time—akin to journal entries of journeys taken and places visited. While the parties’ briefs reveal some uncertainty about certain aspects of LH that are relevant to the questions presented by the motion, Google is well situated to explain the nature of the data and the steps Google takes in response to geofence warrants like the one at issue here.

The motion is also “timely.” *Tafas*, 511 F. Supp. 2d at 659. This motion was fully briefed as of December 9, 2019 and is scheduled for a hearing on February 20, 2020. The Court expressly directed Google to file this motion on or before today’s date. ECF No. 51 at 1. And the filing today allows time for the parties to consider the proposed brief well in advance of the scheduled suppression hearing. *Compare, e.g., id.* at 660-661 (rejecting argument that proposed amicus briefs were untimely where they “were filed a relatively short time after the case began” and “before the first hearing”), *with Centeno-Bernuy v. Perry*, 302 F. Supp. 2d 128, 131 (W.D.N.Y. 2003) (denying leave to file brief on timeliness grounds where it was submitted after hearing date); *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 282 F. Supp. 2d 1271, 1274 (D.N.M. 2002) (same).

Counsel for Google has consulted with counsel for both parties, and both parties declined to take any position on this motion advance of its filing. Pursuant to Local Rule 47(E), Google hereby waives hearing and oral argument on this motion. A proposed order is attached.

Dated: December 20, 2019

Respectfully submitted,

/s/ Brittany Blueitt Amadi

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